

REMARKS

Status of Claims

Claims 38, 40, and 55 are canceled and Claims 19, 28-29, 37, 39, 47, 74-76, and 78 are amended herein. Claims 77 was indicated as allowed. Therefore with this amendment, Claims 19-20, 22-31, 37, 39, 41, 43-54, 56-58, and 74-79 are currently pending and under examination in this application. Support for the amendments is found throughout the specification; therefore, the amendments do not introduce new matter into this application.

January 12, 2006, Telephonic Interview with Patent and Trademark Office

On January 12, 2006, Examiner Ahmed participated in a telephonic interview with Applicants' undersigned representative. Mr. Todd J. Obijeski was also present with the undersigned. Parties discussed the Final Office Action of December 15, 2005, and the PTO's rejection of claims under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,962,081 to Dobry et al ("*Dobry*").

Relative to Figures 2 and 5 of *Dobry*, Applicants' representatives submitted to the PTO that the fine particles and plastic discs disclosed in *Dobry* do not and cannot teach or suggest the claimed distribution of the flakes across the cross section or entire thickness of the linoleum sheet of the present invention as demonstrated in Figure 3 and described in Applicants' specification. *See*: Applicants' specification at paragraph [0030], Patent Application Publication US2002/002010128. Examiner Ahmed responded that the "whole cross section" language in the claims was not clear, and it was agreed that substituting "entire thickness" in place of the phrase "whole cross section" would render the claim language more clear. Thus, to clarify independent Claims 19, 37, and 76, these claims were amended in Applicants' February 14, 2006, Amendment and Response Pursuant to 37 C.F.R. § 1.116 (Response to Final Office Action).

April 18, 2006, Telephonic Interview with Patent and Trademark Office

On April 18, 2006, Examiner Ahmed participated in another telephonic interview with Applicants' undersigned representative. Mr. Todd J. Objeski was also present with the undersigned. Parties discussed the Advisory Action of March 31, 2006, and the PTO's rejection of claims under 35 U.S.C. §102(b) as being anticipated by *Dobry*.

Examiner Ahmed stated that the scope of the independent claims was unclear. At Examiner Ahmed's suggestion, Applicants' representatives agreed to amend the independent claims to indicate: (1) that the thickness of the flakes is less than the thickness of the linoleum sheet; and (2) that the flakes are oriented substantially parallel to the surface of the linoleum sheet. Thus, to clarify independent Claims 19, 37, and 76, these claims were amended in Applicants' May 15, 2006, Response and Submission Pursuant to 37 C.F.R. § 1.114 (Request for Continued Examination).

Rejections Under 35 U.S.C. § 112, Second Paragraph

A. Claims 19-20, 22-31, 37-41, 43-58, and 74-77 were rejected under 35 U.S.C. § 112, second paragraph, because, according to the PTO, the phrase "substantially parallel" in independent Claims 19, 37, and 76 renders the rejected claims indefinite. Applicants respectfully note that, although Claim 77 was included in this rejection, Claim 77 does not contain the language that the PTO objected to and moreover Claim 77 is indicated as allowed. Applicants believe that the inclusion of Claim 77 was a clerical/typographical error and that Claim 77 was not part of this rejection, and respectfully request clarification from the PTO.

Claims 19, 37, and 76 are amended herein to delete the phrase, "wherein the flakes are oriented substantially parallel to the surface of the linoleum sheet." In view of this amendment to Claims 19, 37, and 76, Applicants respectfully assert that this rejection under 35 U.S.C. § 112, second paragraph, is obviated and therefore Applicants request that this rejection be withdrawn and Claims 19-20, 22-31, 37-41, 43-58, and 74-76 be allowed.

B. Claims 19, 37-41, 74, and 76 were rejected under 35 U.S.C. § 112, second paragraph, because, according to the PTO, the term “particle size” is ambiguous and renders these claims indefinite.

Claims 19 and 76 are amended herein to delete the phrase, “particle size in the range of” In view of this amendment to Claims 19 and 76, Applicants respectfully assert that this rejection under 35 U.S.C. § 112, second paragraph, is obviated and therefore Applicants request that this rejection be withdrawn and Claims 19, 37-41, 74, and 76 be allowed.

C. Claims 47 and 78 were rejected under 35 U.S.C. § 112, second paragraph, as reciting improper Markush groups. In view of the amendment to Claim 47, Applicants assert that this rejection is obviated and respectfully request that it be withdrawn. In view of the amendment to Claim 78 which provides a numbered and lettered outlining of this claim, Applicants respectfully maintain that this rejection is obviated. Applicants assert that Claim 78 is in accordance with MPEP § 2173.05(h)(II) and respectfully request that this rejection be withdrawn.

Rejection Under 35 U.S.C. § 102(b) in View of *Dobry et al.*

Claims 19-20, 22-31, 37-41, 43-58, 74-75, and 78-79 were rejected under 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 2,962,081 to Dobry et al. (“*Dobry*”). According to the PTO:

“Figure 2 is a cross-sectional view of the surface covering and specifically shows that the plastic chips (10) are imbedded in the matrix of fine granules (11) and hence are present over the whole cross section of the plastic composition. Layer 20 is a backing material and does not form part of the sheet comprising the plastic chips and matrix of fine granules. In other words, the layer comprising the plastic chips and matrix of fine granules meets the limitations of the claimed planar structure.”

(Office Action, page 6, section 6, lines 15-21.) Respectfully, Applicants traverse this rejection for at least the following reasons.

In view of the January 12, 2006, telephone interview with the PTO, Applicants are at a loss to understand why this rejection was maintained. During the January 12, 2006, telephone interview, Applicants' representatives discussed with the Examiner the differences between the flakes of the present invention and the plastic chips 10 of *Dobry*. Among other things, Applicants' representatives explained how the plastics chips 10 of *Dobry* are arranged along the very top of the thickness of the fine particle matrix 11 and thus cannot be distributed throughout the entire thickness of *Dobry's* sheet. Moreover, Applicants' representatives explained how the method of manufacturing disclosed in *Dobry* provides a sheet with *Dobry's* plastics chips 10 arranged along the very top of the fine particle matrix 11 and thus cannot provide a distribution of *Dobry's* chips throughout the entire thickness of sheet.

Figure 2 of *Dobry* clearly shows a layer of fine particles 11 on top of the backing 20. The much larger plastic chips 10 are situated along the top of the fine particles 11. There are no fine particles 11 shown above the plastics chips 10, only fine particles 11 filling the spaces between the plastic chips 10, along the length of *Dobry's* sheet. Accordingly, *Dobry* teaches only plastics chips 10 along the top of the sheet structure only, not plastics chips 10 distributed throughout the entire thickness or cross-section of the sheet. A layer of the fine particle matrix 11 is situated between the plastics chips 10 along the top of the sheet and the backing 20 and prevent the plastic chips 10 from being distributed throughout the entire thickness or cross section of the sheet.

Further, *Dobry* states that in accordance with his invention, "a flexible smooth surface floor covering resembling stone terrazzo is produced by depositing uniformly on a backing material a smooth layer of a mixture of fine particles of plastic composition of at least two distinct colors and then scattering materially larger, irregular, flat plastic chips on top of the fine particles in such a manner that the chips lie flat and relatively few of them overlap."

(Emphasis added.) See column 1, lines 58-66. This statement in *Dobry* is consistent with Figure 2, and precludes the plastic chips 10 from being distributed throughout the entire thickness or cross section of the sheet, as claimed in Applicants' invention.

Still further, *Dobry* discusses the stencil process for producing his sheet structure and states the following:

"A section of the web 20 is then completely covered with fine multi-colored particles 11 of plastic composition. Chips 10 of similar plastic composition are scattered on top of the layer of particles in such a manner that they substantially cover the fine particles, but relatively few of the chips overlap or touch each other." (Emphasis added.) See column 3, lines 14-20.

Figure 5 of *Dobry* exemplifies the process of feeding the plastic chips 10 on to the top of the fine particles 11, and describes this process on column 3, lines 55-56:

"In like manner, the second feeding means 24 feeds the large chips 10 and randomly distributes them on top of the layer of fine particles 11." (Emphasis added.)

Again, these statements in *Dobry* are consistent with Figure 2, and preclude the plastic chips 10 from being distributed throughout the entire thickness or cross section of the sheet, as claimed in Applicants' invention.

It is also clear from *Dobry* that the arrangement of the plastic chips 10 on top of the fine particles 11 is *critical*. According to *Dobry*:

"This invention has been described when using a conventional press, but the pressing operation can be carried out by using a rotary press or calendar rolls. In such a case, care must be taken to prevent the pieces from changing their position as they

pass through the calendar rolls since any change of position will destroy the character of the design.”

(Emphasis added, *Dobry* col. 6, lines 60-67). Again, such a statement in *Dobry* is consistent with Figure 2, and precludes the plastic chips 10 from being distributed throughout the entire thickness or cross section of the sheet, as claimed in Applicants' invention.

In sharp contrast, Claims 19-20, 22-31, 37-41, 43-58, 74-75, and 78-79 are directed to a planar structure comprising a linoleum sheet with flakes distributed over the **entire thickness or cross-section** of the sheet and *not* merely arranged along the very top of sheet. *Dobry* does not and cannot teach or suggest a planar structure comprising a linoleum sheet having flakes distributed throughout the entire thickness or cross-section in accordance with the present invention. Because *Dobry* does not teach or suggest every element of the claimed invention, Applicants respectfully request that the rejection of Claims 19-20, 22-31, 37-41, 43-58, 74-75, and 78-79 under 35 U.S.C. §102(b) as being anticipated by *Dobry* be withdrawn.

Rejection Under 35 U.S.C. § 102(b) in View of *Harris*

Claims 19-20, 22-31, 37-41, 43-58, 74-75, and 78-79 were rejected under 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 3,325,337 to Harris (“*Harris*”). According to the PTO, *Harris* discloses “molded linoleum surface coverings [that] have inlaid, novel design effects which are achieved by using mottle of special compositions. The mottle comprises particles of clear or transparent vinyl resin mix which is compatible with linoleum and particles of a linoleum binder.” (Office Action, page 5, section 5, lines 5-8.) Respectfully, Applicants traverse this rejection as follows.

Harris discloses a sheet structure having an *inlaid mottle*. As illustrated in Figure 2 and Example 2 (col. 4, lines 35-54), the *Harris* sheet structure includes: 1) *non-inlaid linoleum* portions (left side of sheet in Fig. 2), which include **no flakes or particles** of any type; and 2) *inlaid vinyl resin* portions (right side of sheet in Fig. 2), which contain chips or

particles. Regarding the *inlaid vinyl resin* portion of the sheet, *Harris* discloses that the inlaid mottle portion includes: a) 40-75% by weight vinyl resin, which constitutes the *continuous phase* of the sheet structure; b) 23-45% by weight linoleum binder particles, make up part of the *dispersed phase* of the sheet structure; and c) 2-15% by weight accent particles such as particles of metallic glitter, including metallic chips of aluminum, which also make up part of the *dispersed phase* of the sheet structure. *See, for example:* col. 3, lines 31-42; col. 5, lines 31-52 (Claim 1). Thus, in contrast to the PTO's assertion, *Harris* does not disclose particles of vinyl resin flakes that are dispersed in a linoleum binder, because the particles in the inlaid mottle are not vinyl resin. The particles in the vinyl resin base composition of *Harris* are either linoleum binder particles, metallic/accent particles, or both.

In sharp contrast, Claims 19-20, 22-31, 37-41, 43-58, 74-75, and 78-79 of the present invention are directed to a planar structure comprising a linoleum sheet formed of a linoleum base composition, the linoleum sheet containing over the entire thickness thereof flakes comprising an organic polymeric material, the flakes being compatible with the linoleum base composition and having a thickness in the range of 1.0 μm to 400 μm , which is less than the thickness of the linoleum sheet. *Harris* does not teach or suggest a planar structure comprising a linoleum sheet having flakes distributed throughout the entire thickness or cross-section in accordance with the present invention. Because, *Harris* does not teach or suggest every element of the claimed invention, Applicants respectfully request that the rejection of Claims 19-20, 22-31, 37-41, 43-58, 74-75, and 78-79 under 35 U.S.C. §102(b) as being anticipated by *Harris* be withdrawn.


CONCLUSION

Applicants believe these Amendments and Remarks place the claims in condition for allowance and such action is respectfully requested. If issues may be resolved through Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney is respectfully requested.

No fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required, or credit any overpayment, to Deposit Account Number 09-0528, referencing number 41461.0015.1.

Respectfully submitted,

September 21, 2006
Date



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